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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	SUSAN LINES,)	Case No. CV 15-06156 DDP (PJWx)
12)	
12	Plaintiff,)	ORDER GRANTING PLAINTIFF'S MOTION
13)	TO REMAND AND VACATING AS MOOT
13	v.)	DEFENDANTS' MOTION TO DISMISS
14)	
14	BANK OF AMERICA, NATIONAL)	[Dkt. Nos. 10 and 8]
15	ASSOCIATION, FIA CARD)	
15	SERVICES, N.A.,)	
16)	
16	Defendants.)	
17	_____)	

Presently before the Court are Plaintiff Susan Lines's Motion for Order Remanding Removed Action to State Court and Defendants' Motion to Dismiss Plaintiff's Complaint. Having considered the parties' submissions, the Court adopts the following order.

I. BACKGROUND

Plaintiff Susan Lines ("Lines") brought a consumer protection suit against Defendants Bank of America, National Association ("BOA") and FIA Card Services, N.A. ("FIA") in California Superior Court. (See Notice of Removal, Ex. 1 .) Plaintiff alleged in her complaint that in 1986, William Lines (Plaintiff's former husband) opened a credit card account that was eventually transferred to BOA

1 and FIA. (Id. at 4-5.) Plaintiff found that the account was
2 "being reported on her consumer credit reports" even though she had
3 never been an account holder or authorized anyone to open an
4 account in her name. (Id.) Plaintiff tried to communicate to
5 Defendants that she should not be responsible for any collections
6 connected to the account and that the account should not be on her
7 credit reports, but Defendants "told plaintiff that she was
8 responsible for the [account] because her name appeared on their
9 records." (Id. at 5.) Plaintiff alleges that she has suffered
10 "damage to her credit rating, loss of credit, [and] loss of the
11 ability to purchase and to benefit from credit." (Id. at 6.)

12 Plaintiff filed her suit on July 13, 2015. On August 13,
13 2015, Defendants filed a Notice of Removal to bring the case to
14 this Court. (Dkt. No. 1, Notice of Removal.) Defendants removed
15 on the basis of federal question jurisdiction because Plaintiff
16 alleged violations of the federal Truth in Lending Act and Fair
17 Credit Reporting Act in addition to state consumer protection laws.
18 (Id.)

19 On August 20, 2015, Defendants filed a Motion to Dismiss,
20 arguing that Plaintiff's claims are variously time barred,
21 preempted, and without standing. (Defs.' Mot. Dismiss.) On August
22 28, 2015, Plaintiff filed a Motion to Remand the case back to the
23 California Superior Court. (Pl.'s Mot. Remand.)

24 **II. LEGAL STANDARD**

25 **A. Motion to Remand**

26 A defendant may remove a case from state court to federal
27 court if the case could have originally been filed in federal
28 court. 28 U.S.C. § 1441(a). There is a "strong presumption"

1 against removal and the Defendant has the burden of establishing
2 that removal is proper by a preponderance of evidence. Gaus v.
3 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992); Morrison v. Zangpo,
4 No. C-08-1945 EMC, 2008 WL 2948696, at *1 (N.D. Cal. July 28,
5 2008). A defendant has thirty days in which to remove the case
6 after receiving, "through service or otherwise, . . . a copy of the
7 initial pleading setting forth the claim for relief upon which such
8 action or proceeding is based." 28 U.S.C. § 1446(b)(1). Likewise,
9 a "motion to remand the case on the basis of any defect other than
10 lack of subject matter jurisdiction must be made within 30 days
11 after the filing of the notice of removal under section 1446(a)."
12 28 U.S.C. § 1447(c).

13 **B. Motion to Dismiss**

14 A 12(b)(6) motion to dismiss requires a court to determine the
15 sufficiency of the plaintiff's complaint and whether it contains a
16 "short and plain statement of the claim showing that the pleader is
17 entitled to relief." Fed. R. Civ. P. 8(a)(2). Under Rule
18 12(b)(6), a court must (1) construe the complaint in the light most
19 favorable to the plaintiff, and (2) accept all well-pleaded factual
20 allegations as true, as well as all reasonable inferences to be
21 drawn from them. See Sprewell v. Golden State Warriors, 266 F.3d
22 979, 988 (9th Cir. 2001), amended on denial of reh'g, 275 F.3d 1187
23 (9th Cir. 2001); Pareto v. F.D.I.C., 139 F.3d 696, 699 (9th Cir.
24 1998).

25 In order to survive a 12(b)(6) motion to dismiss, the
26 complaint must "contain sufficient factual matter, accepted as
27 true, to 'state a claim to relief that is plausible on its face.'"
28 Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009) (quoting Bell Atl.

1 Corp. v. Twombly, 550 U.S. 544, 570 (2007)). However,
2 "[t]hreadbare recitals of the elements of a cause of action,
3 supported by mere conclusory statements, do not suffice." Id. at
4 678. Dismissal is proper if the complaint "lacks a cognizable
5 legal theory or sufficient facts to support a cognizable legal
6 theory." Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097,
7 1104 (9th Cir. 2008); see also Twombly, 550 U.S. at 561-63
8 (dismissal for failure to state a claim does not require the
9 appearance, beyond a doubt, that the plaintiff can prove "no set of
10 facts" in support of its claim that would entitle it to relief). A
11 complaint does not suffice "if it tenders 'naked assertion[s]'
12 devoid of 'further factual enhancement.'" Iqbal, 556 U.S. at 678
13 (quoting Twombly, 550 U.S. at 556). "A claim has facial
14 plausibility when the plaintiff pleads factual content that allows
15 the court to draw the reasonable inference that the defendant is
16 liable for the misconduct alleged." Id. The Court need not accept
17 as true "legal conclusions merely because they are cast in the form
18 of factual allegations." Warren v. Fox Family Worldwide, Inc., 328
19 F.3d 1136, 1139 (9th Cir. 2003).

20 **III. DISCUSSION**

21 **A. Motion to Remand**

22 Plaintiff has filed a Motion to Remand the case back to the
23 California Superior Court. She argues that Defendant BOA's Notice
24 of Removal was filed thirty-one days after receiving service of
25 summons and the complaint, thus making the removal untimely and
26 improper. (Pl.'s Mot. Remand at 7-10.) Defendants respond that
27 the removal was timely because Plaintiff sent an email to Defendant
28 BOA stating that Plaintiff had served Defendant FIA on July 23,

1 2015, which means that filing for removal on August 13, 2015, was
2 within the thirty-day window for FIA. (Defs.' Opp'n Mot. Remand at
3 2-3.) Plaintiff responds that Defendant FIA is no longer a
4 separate legal entity because on October 1, 2014, FIA merged into
5 BOA. (Pl.'s Reply at 4-6.) Plaintiff argues that this means FIA
6 cannot sue or be sued, much less be served with a complaint or file
7 a notice of removal. (Id. at 4-7.)

8 Plaintiff is correct that the thirty-day time limit of 28
9 U.S.C. § 1446 is strictly construed. See Roth v. CHA Hollywood
10 Med. Ctr., L.P., 720 F.3d 1121, 1125 (9th Cir. 2013) ("For good
11 reason, § 1446(b)(1) and (b)(3) place strict limits on a defendant
12 who is put on notice of removability by a plaintiff."). It is also
13 true that if BOA filed the Notice of Removal on August 13, 2015,
14 then BOA filed on the thirty-first day after receiving service of
15 the summons and complaint based on the time computation of Federal
16 Rule of Civil Procedure 6. Thus, the key question is whether FIA
17 could or did file the Notice of Removal, which would be timely as
18 FIA would be a later-noticed defendant. See Destfino v. Reiswig,
19 630 F.3d 952, 956 (9th Cir. 2011).

20 In Defendants' Motion to Dismiss, Defendants noted that
21 "[e]ffective October 1, 2014, FIA Card Services, N.A. has merged
22 with and into Bank of America, N.A." (Defs.' Mot. Dismiss at 1
23 n.1.) After the Motion to Dismiss was filed, Plaintiff filed her
24 Motion to Remand this case. As Plaintiff's attorney explained, his
25 belief that FIA was still an active party and had been served with
26 the summons and complaint "was in error." (Pl.'s Reply, Decl.
27 Richard Scott Lysle ¶ 3.) It seems that Defendants' Motion to
28 Dismiss put Plaintiff's counsel on notice of his error: he states

1 that after he tried to serve FIA, he "ha[d] since been informed"
2 and "accept[ed] Bank of America's representation" that FIA was
3 merged "out of existence" into BOA. (See id. at ¶¶ 3-4.)

4 Defendants' evidence of FIA's service is an almost entirely
5 redacted email from Plaintiff's attorney stating that "co-defendant
6 F.I.A. Card Services, N.A. was served with Summons, Complaint and
7 other papers on July 23, 2015." (Defs.' Opp'n, Decl. Of Judith T.
8 Sethna Ex. A.) Defendants' counsel declares that "[b]ased on Mr.
9 Lysle's email, FIA removed this action on August 13, 2015" but that
10 "[t]o date, FIA has been unable to locate a copy of the Summons,
11 Complaint served by Plaintiff." (Id. ¶ 3-4.) However, the
12 receiver to which Plaintiff's attorney sent the complaint for FIA
13 told Plaintiff's counsel that the receiver "did not have the legal
14 capacity to accept [certified mail] on behalf of a no-longer extant
15 entity." (Id. ¶ 5.) Plaintiff now contends that FIA "does not
16 have the legal capacity to appear as a litigant" and "does not have
17 the legal capacity to file a Notice of Removal on its own behalf."
18 (Pl.'s Reply at 7.)

19 Based on BOA's representations to this Court, it appears that
20 Plaintiff is correct and that FIA is no longer a separate legal
21 entity and did not file the Notice of Removal. In the Defendants'
22 Notice of Removal, the attorney caption states: "Attorneys for
23 Defendant Bank of America, N.A., **for itself and as successor by**
24 **merger to FIA** Card Services, N.A." (Notice of Removal.) The same
25 phrase is repeated in the motion itself: "Please take notice that
26 **Defendant Bank of America, N.A., for itself and as successor by**
27 **merger to FIA** Card Services, N.A. ("BANA"), **hereby removes** the
28 action described below" (Id. at 2.) Thereafter, all

1 references to the "defendants" are to a singular "BANA" in both the
2 Notice of Removal and the Motion to Dismiss.

3 And even if FIA were to exist as a separate party, there is no
4 indication that FIA did not also have notice of the complaint at
5 the same time BOA did on July 13, 2015, as BOA is the successor by
6 merger for FIA. There is also no indication that FIA needed to –
7 or did – consent to BOA's filing of the Notice of Removal. Most
8 telling is the footnote in the Motion to Dismiss stating that FIA
9 "merged with and into" BOA and the dropping of all further
10 reference to FIA. (Defs.' Mot. Dismiss at 1 n.1.) Altogether,
11 these representations indicate that FIA did not file the Notice of
12 Removal and is not a separate legal entity who was served at a
13 later date. Therefore, the Notice of Removal is untimely as it was
14 filed after the thirty-day time limit for removing a case.

15 **B. Attorney's Fees**

16 Under 28 U.S.C. § 1447(c), "[a]n order remanding the case may
17 require payment of just costs and any actual expenses, including
18 attorney fees, incurred as a result of the removal." The Supreme
19 Court has interpreted this statutory section to warrant attorney's
20 fee awards "only where the removing party lacked an objectively
21 reasonable basis for seeking removal" unless "unusual
22 circumstances" provide a basis for deviating from the general rule.
23 Martin v. Franklin Capital Corp., 546 U.S. 132, 141 (2005). Grants
24 of attorney's fees are discretionary, but are to be guided by the
25 principles underlying § 1447(c): to "deter removals sought for the
26 purpose of prolonging litigation and imposing costs on the opposing
27 party." (Id. at 140.)

1 Here, Plaintiff has not provided any argument or facts showing
2 that Defendants' Notice of Removal was filed with the purpose of
3 delaying litigation or imposing costs. (See Pl.'s Mot. Remand at
4 12-13.) Further, absent the untimeliness of the Notice of Removal,
5 there is a legitimate legal ground for removal under 28 U.S.C. §
6 1441 because Plaintiff's federal law claims could have originally
7 been brought in federal court. Therefore, the Court finds that the
8 purposes for awarding attorney's fees under § 1447(c) are not
9 present here and Plaintiff's request for attorney's fees is denied.

10 **IV. CONCLUSION**

11 For the reasons stated above, Plaintiff's Motion to Remand is
12 GRANTED in part as to the remand and DENIED in part as to the
13 attorney's fees. Because the Court lacks jurisdiction to hear it,
14 the Defendants' Motion to Dismiss is VACATED as moot. (Dkt. No.
15 8.)

16
17 IT IS SO ORDERED.

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19
20 Dated: September 28, 2015


DEAN D. PREGERSON
United States District Judge